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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,754	03/21/2005	Jimmy Wayne Mays	OSTEONICS 3.3-332	1848
530 7590 02/07/2008 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER PEZZUTO, HELEN LEE	
			ART UNIT 1796	PAPER NUMBER
			MAIL DATE 02/07/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/501,754

Applicant(s)

MAYS ET AL.

Examiner

Helen L. Pezzuto

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 24-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-43 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/22/04, 3/21/05, 12/26/07</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election with traverse of Group I, claims 1-20, 23, and 43 in the reply filed on 12/26/07 is acknowledged. The traversal is on the ground(s) that US 5,369,142 does not teach the special technical feature embodied by the composition in claim 1, and hence claims 1-42 contains this special feature and have unity of invention. This is not found persuasive because contrary to applicant's assertion, US 5,369,142 does teach the composition of claim 1 as will be discussed in this office action. Furthermore, the examiner agrees to consolidate claims 21-22 with elected Group I.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 24-40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 12/26/07.

Currently, claims 1-23, and 43 are under consideration in this application.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-23 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Culbertson et al. (US-142) in view of Mitra (US-347).

US 5,369,142 to Culbertson et al. discloses a glass ionomer cement composition comprising amino acid functionalized, water-soluble polycarboxylic acids. Specifically, prior art teaches polyacrylic acid or copolymers of acrylic acid and itaconic acid modified with (meth)acryloyl-substituted amino acid monomers, resultant in glass ionomer polymers having one or more pendant amino acid residues on the backbone of the polymers(col. 2, line 38 to col. 3, line 30). Suitable synthetic and natural amino acid includes those recited in the present claims (col. 4, lines 27-45). As mentioned, the preferred polyacrylic acid monomers include acrylic acid and itaconic

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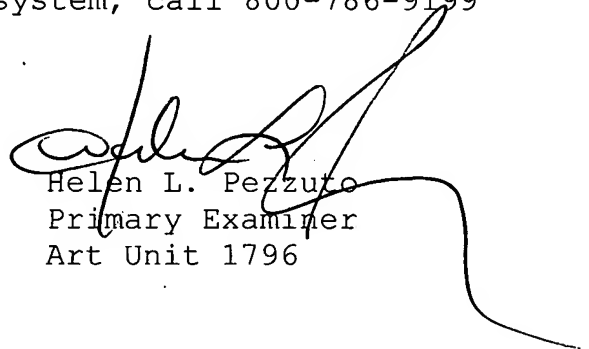
acid copolymers and mixtures thereof (col. 4, lines 3-26). Other preferred monomers include modified polyalkenoic acids as taught in US 5,130,347 to Mitra (col. 4, line 23), wherein copolymers of acrylic and itaconic acids with comonomers such as 2-hydroxyethyl methacrylate and reactions with coupling compounds are taught within the scope of the instant commoner and bifunctional monomer as expressed in claims 14-16, and 19 (see US-347, col. 5, line 3 to col. 7, line 18). Accordingly, it would have been obvious to one having ordinary skill in the art to formulate amino acid residue-containing glass ionomer polymers as taught in US-142 using the modified polyalkenoic acids taught in US-347 as suggested, motivated by the reasonable expectation of success.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen L. Pezzuto whose telephone number is (571) 272-1108. The examiner can normally be reached on 8 AM to 4 PM, Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Helen L. Pezzuto  
Primary Examiner  
Art Unit 1796

hlp